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# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91188256
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# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

The Susan G. Komen	)	
Breast Cancer Foundation, Inc	)	
(Opposer)	)	
	) Oppositi	ion No. 91188256
VS.	)	
	)	
Andrew J Covault	)	
(Applicant)	)	

Mark: HYDRATE FOR THE CURE

#### **ANSWER**

The following is the Answer of Andrew J Covault (hereinafter "Applicant"), owner of Federal Trademark Application Serial No. 77341034 for the mark 'HYDRATE FOR THE CURE', in response to the Notice of Opposition of SUSAN G. KOMEN BREAST CANCER FOUNDATION, Inc d/b/a SUSAN G. KOMEN FOR THE CURE (hereinafter "Opposer" or "Komen"), and assigned Opposition No. 91188256.

- 1. Applicant admits to filing an application on November 30, 2007 to register the mark 'HYDRATE FOR THE CURE' in connection with 'portable beverage dispensers, drinking vessels; waist pack and backpack-style containers sold empty, namely drinking vessels which are made to fit in backpack compartments; insulation wraps and sleeves and clothing articles for drinking vessels and beverage dispensers, namely, and insulating sleeve holders for beverage cans' in the International Class 021 category, as stated in the opposition.
- 2. Applicant is aware Opposer was founded for charitable fund raising 'services', namely raising money for 'breast cancer' research and raising money for 'breast' health awareness and promoting 'breast' health awareness programs in International Class 036, as stated in the opposition. Where as the Applicant offers its 'goods' directly to the general consuming public in retail and wholesale markets in the category of 'hydration' products in International Class 021, thus establishing distinctively different market channels and business models in the minds of the general consuming public.
- 3. Applicant acknowledges the Opposer appears to be the owner of numerous trademarks that include the words 'FOR THE CURE' in connection with charitable 'fundraising services' specifically for 'breast' cancer research and awareness. Applicant also acknowledges numerous other entities not owned, authorized by, or associated with the Opposer whose registered trademarks also include the term 'FOR THE CURE' within their mark in support of other causes and product categories such as; 'SHOWER FOR THE CURE', 'FLIGHT FOR THE CURE', 'DRAGONBOATS FOR THE CURE', 'TURN LEFT FOR THE CURE', 'BRUSH FOR THE CURE', 'CRITTERS FOR THE CURE', THE SOCIETY FOR THE CURE OF SOULS', and 'TOUR FOR THE CURE'.

- 4. Applicant is without knowledge or information sufficient to form a belief as to the extent of the Opposers claim to be partnered with different companies' goods, or to the extent that the Opposers' other 'FOR THE CURE' marks stated in the opposition are used in conjunction with the sale of products sold by these companies. Applicant clearly states that none of the companies mentioned in the opposition offer similar product goods in same category or market channel as the stated in the Applicants' application for its 'HYDRATE FOR THE CURE' mark thus, there is no likelihood of confusion.
  Additionally, in almost all instances, when in actual use the Opposers' other 'FOR THE CURE' marks sited in the opposition are accompanied by the registered 'SUSAN G. KOMEN FOT THE CURE' primary trademark. Likewise when the 'HYDRATE FOR THE CURE' mark is in use it is accompanied by the Applicants registered company 'QUENCHYDRATION' primary trademark, thus it unlikely the general consuming public would be confused as to ownership, authorization, or association of the 'HYDRATE FOR THE CURE' mark.
- 5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the Opposers' claim to have had programs with well-known companies, including beverage companies such as Fuse Beverages. Applicant denies the general consuming public would associate goods bearing the mark 'HYDRATE FOR THE CURE' as benefiting Opposers' efforts for the following reasons:
  - a. The sited 'Fuze' programs utilizes a 'HEROS FOR HOPE' mark and not a derivation of the Opposers' other "FOR THE CURE' marks. The Fuze website predominately shows the 'SUSAN G. KOMEN FOR THE CURE' primary trademark in conjunction with the 'HEROS FOR HOPE' mark, thus there would be no confusion with the 'HYDRATE FOR THE CURE' mark in the minds of the general consuming public. (see page 1 of attached documents for example)
  - b. Applicants products, as listed in the application, are sold empty with no beverages and are in a completely different 'goods' category from the category of the beverage company sited.
  - c. It is more reasonable to believe the general consuming public would associate the 'HYDRATE FOR THE CURE' with a health and wellness effort, and not with the Opposer or any of its marks.
- 6. Although the Applicant acknowledges the goodwill built up with the specific trademarks 'RACE FOR THE CURE' and 'SUSAN G. KOMEN FOR THE CURE' Applicant denies the general consuming public believes all of the various "FOR THE CURE' marks registered or in wide spread use, including Opposers so-called family, originated solely with the Opposer or benefit a single cause. If the Opposer indeed has confidence that it has rights to all words or combination of words in the English language that are followed by the terms 'FOR THE CURE', it would not be necessary for the Opposer to continue to seek numerous registrations with derivations on the terms 'FOR THE CURE' to distinguish its trademark.

In fact, by continuing to seek multiple new registrations (over 110) for so many marks that include the terms 'FOR THE CURE', Opposer has itself diluted the distinctiveness of its primary 'FOR THE CURE' mark to the point of it being generic, and thus can not be protected on its own. Terms such as 'FOR THE CURE' or 'FOR A CURE' are too generic and too widespread to block entities besides Opposer from using it. As with all of the registered marks, including those owned by the Opposer and by other entities, which include

the term 'FOR THE CURE' or 'FOR A CURE' within their mark, the distinguishing factor becomes the key word(s) used in conjunction with 'FOR THE CURE', such as 'HYDRATE' or 'BRUSH' or 'TURN LEFT' or 'RACE' that bring meaning and relevance to the trademarks as a whole.

7. Applicant denies in all respects that there is any likelihood of confusion by the general public, as referenced with above statements in paragraphs 2 through 6, that such goods marked with 'HYDRATE FOR THE CURE' would originate with, are authorized by, or benefit the Opposer in any way. Additionally, the Patent and Trade office continues to approve registration of numerous trademarks that do not originate from the Opposer, that include the terms 'FOR A CURE' or 'FOR THE CURE' within their mark such as; 'CARS FOR A CURE' benefiting American Cancer Society, 'SHOWER FOR THE CURE', 'FLIGHT FOR THE CURE', 'PROTECT FOR THE CURE', 'BRUSH FOR THE CURE', 'CRITTERS FOR THE CURE', 'SERVICE FOR THE CURE', and as recently as December 2008 - 'TOUR FOR THE CURE' and March of 2008 - 'TURN LEFT FOR THE CURE'. These last two registrations were approved well after Applicant filed its application for the "HYDRATE FOR THE CURE' mark. (see attached documents for examples)

The terms 'FOR THE CURE' and 'FOR A CURE' are widely used in the general public to denote support and awareness of a variety of worthwhile causes such as prostate, breast, ovarian, brain, and childhood cancers, diabetes, Autism, spinal injuries, Lung disease, Leukemia, Lymphoma, Canine Cancer, Lou Gehrig disease, and Alzheimer, and the effects of dehydration as in 'HYDRATE FOR THE CURE' without any confusion by the general public as the entity originating, authorizing, or benefiting from these efforts. In almost all cases, the benefiting entities are clearly stated in conjunction with the various of 'FOR THE CURE' marks.

Opposer does not provide or offer any product goods directly to the general consuming public, but the Applicant does in the stated categories and all of the Applicants' goods are clearly marked with the organization or entity that benefits from the sale of the goods under the "HYDRATE FOR THE CURE' mark, so there is no way the 'HYDRATE FOR THE CURE' marked product goods could confuse or mislead the general consuming public, or interfere with the Opposers mark.

8. Applicant is without knowledge or information sufficient to form a belief as to the truth of the Opposers' claim stated in paragraph 8, except Applicant states that Opposer would not be damaged in any way by the registration of Applicants "HYDRATE FOR THE CURE" mark.

As stated in paragraph 6, the Opposer by its own actions has ensured that the only distinguishing factor within the 'FOR THE CURE' mark has become the key word(s) used to distinguish the mark as a whole in conjunction with the generic 'FOR THE CURE' terms. As such the distinguishing factor in the Applicants 'HYDRATE FOR THE CURE' mark becomes "HYDRATE', and along with this mark the Applicant owns several previously registered 'family' marks approved by the Patent and Trade Office, it has built around the 'Hydrate and Hydration' theme, including: 'HYDRATE FOR HEALTH®', 'HYDRATIONGEAR®', and 'QUENCHYDRATION®'.

The Applicants established trademarks are valuable assets to the Applicant, and it is the Applicant that would be damaged if it where not allowed to have the 'HYDRATE FOR THE CURE' mark approved for registration.

Opposer has not filed or claimed any mark even remotely similar to the "HYDRATE FOR THE CURE' mark. As a result, the Opposer can not be damaged in any way by the registration of the 'HYDRATE FOR THE CURE' mark.

- 9. Applicant acknowledges that the 'RACE FOR THE CURE' is a recognized mark in use prior to Applicants filing date, but Applicant denies that the registration of the 'HYDRATE FOR THE CURE' mark would in any way dilute or harm the Opposers marks incorporating the statements in paragraphs 2 through 8 along with for the following reasons.
  - a. Precedent has already been set in the decision by the Patent and Trademark Office in the American Cancer Society (ACS) case in which the ACS filed a trademark application for 'CARS FOR A CURE', the name of its car donation program, attorneys for the Susan G. Komen Foundation objected, arguing that potential donors might confuse the program with Komen's 'FOR THE CURE' events, and that the shear quantity of Komen's 'FOR THE CURE' trademarks should give them rights to the term for fund-raising. Over Komen's objections, the Trademark Office issued the mark to the ACS, concluded that the term 'FOR THE CURE' especially in connection with charitable fund-raising, was too wide spread to block others from using it, and made it unlikely that consumers would be confused by the two marks.
  - b. Opposers' own actions have resulted in a dilution of its 'FOR THE CURE' mark to the point of genericness. By seeking to register so many distinctive versions of its 'FOR THE CURE' mark, such as 'COOK FOR THE CURE', 'BAKE FOR THE CURE' and over 110 other 'FOR THE CURE' marks, the Opposer has ensured the only level of distinctiveness of any 'FOR THE CURE' marks is derived from the additional word(s) incorporated with the generic term 'FOR THE CURE', and/or its registered International Class.
  - c. Numerous 'FOR THE CURE' marks have been widely used in the public and the following marks have been approved for registration in the past few years either over the Opposers objections, or without opposition from the Opposer: (see attached documents for examples)

i. 'TURN LEFT FOR THE CURE', March 04 2008
ii. 'THE CURE FOR FINANCIAL CANCER' July 15, 2008
iii. 'TOUR FOR THE CURE' December 02, 2008
iv. 'BRUSH FOR THE CURE, November 27, 2007
v. 'SHOWER FOR THE CURE' September 12, 2006
vi. 'PROTECT FOR THE CURE' (Date Not Available)
vii. 'FLIGHT FOR THE CURE', April 06, 2004
viii. 'DRAGONBOATS FOR THE CURE', March 13, 2007

viii. 'DRAGONBOATS FOR THE CURE', March 13, 2007
ix. 'CRITTERS FOR THE CURE', April 10, 2007
x. 'THE SOCIETY FOR THE CURE OF SOULS', October 17, 2006

d. The Applicant has been utilizing the 'HYDRATE FOR THE CURE' mark as early as September of 2005 with national retailers, and potential partners, and has owned the domain name 'hydrateforthecure.com' since April of 2007 with no contact from, or opposition to the use of either the website or mark from the Opposer, or confusion with any of the Opposers efforts, until this formal notice of opposition.

- e. Applicant has built its own goodwill under its family of 'Hydrate and Hydration' themed marks including its registered trademarks 'HYDRATE FOR HEALTH®', 'HYDRATIONGEAR®', and 'QUENCHYDRATION®' for over 5 years.
- f. The Opposer was founded for charitable fundraising 'services' in one very specific category namely, raising money for 'breast cancer' research and raising money for 'breast health' awareness and promoting 'breast health' awareness programs, International Class 036. The Applicant offers its hydration and hydration gear product 'goods' directly to the consumer markets to promote overall health in International Class 021.

  Considering the different nature of the 'services' offered by the Opposer and the 'goods' offered by the Applicant, in two different marketing channels there will be little crossover between the Opposers efforts and the Applicants 'goods' in the mind of the general consuming public, and thus no confusion.
- g. The general public understands the terms 'FOR THE CURE' to be associated with many activities; including fund raising and awareness programs for a wide variety of causes such as prostate, breast, ovarian, brain, and childhood cancers, diabetes, Autism, spinal injuries, lung disease, Leukemia, Lymphoma, Alzheimer's and others. It is unreasonable to think the general consuming public would associate these terms with only one single entity or foundation, or even a single cause as Opposer contends, but the general public instead intuitively understands the terms 'FOR THE CURE' to represents many different unrelated entities involved in worthwhile causes, as the terms are being used currently. (see attached documents)
- h. All of the Applicant's goods and merchandise would be clearly marked with the 'HYDRATE FOR THE CURE' mark in conjunction with the Applicant's 'registered' company 'QUENCHYDRATION' trademark, ensuring there is no confusion or association with the Opposer or its efforts.
- i. Therefore the Applicant asserts that there is no actual confusion as to the source of Applicants 'goods' or that anyone would be confused and would believe that such goods originated from, was authorized by, or associated with the Opposer in any fashion.

**Wherefore**, Applicant prays that the Opposers opposition be dismissed with prejudice, and the Applicants registration be approved for the 'HYDRATE FOR THE CURE' mark and for such other and further relief as is just and equitable.

Applicant reserves the right to raise such other defenses or plead affirmatively by counterclaim as may be appropriate upon further investigation and discovery.

Respectfully submitted,

Andrew J Covault (Applicant)

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7615 Southwold Court

Cumming, GA 30041 Tel: 770-777-0220

# Example of Fuze's HEROS FOR HOPE' mark with 'SUSAN G. KOMEN FOR THE CURE' mark





Examples of 'FOR THE CURE' and 'FOR A CURE' marks not originating from the KOMEN

HOME . LUNCHEONS . DAY TRIP . HOTEL PACKAGES . MOTORCOACH TOURS . REQUEST A BROCHURE . ABOUT US



 Dearborn County Convention, Visitor & Tourism Bureau

Dearborn County Visitor Bureau Partners

Press Releases



The Dearborn County Convention, Visitor & Tourism Bureau is an aggressive marketing, service and information organization whose primary responsibility is to positively impact the Dearborn County area economy through visitor expenditures.

The Bureau's unique Tour for the Cure® Program encourages participants to use travel as an opportunity to give back. It promotes health & wellness, supports regional businesses and promotes Southeast Indiana as a travel destination and a viable form of economic development.

Our offices are located at 320 Walnut Street Lawrenceburg, Indiana 47025 812-537-0814 or 800-322-8198 Fax: 81537-0845

Office hours are. Monday thru Thursday, 9 00am - 5 00pm Friday, 9 00am - 4 30pm Closed on Saturday & Sunday

E-mail: dearborn@visitsoutheastIndiana.com www.visitsoutheastIndiana.com

# Have Fun, Give Hope. Visit Southeast Indiana

Tour for the Cure® is a trademark of the Dearhom County Convention, Visitor & Tourism Bureau, 320 Walnut Steet, Lawrenceburg, IN 47025 • (800) 322-8198 or www.visitsoutheastindiana.com

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#### Why Critters for the Cure?

CRITTERS FOR THE CURE!

My best friend Ali was first diagnosed with breast cancer at age 40.

Since then, breast cancer has returned three more times, resulting in a mastectomy of her left breast, and last summer... a breast cancer cell that traveled to her liver.

Overnight, Ali went from stage 1 to stage 4. Today, she faces a battle that she can't beat. But due to some new drugs on the market, specifically Herceptin, her life expectancy improves. Generally a patient with liver cancer is given a two year life-expectancy, but today, with the help of the wonder drug Herceptin, Ali certainly plans to beat the odds.







Shop for a Cure

'FOR A CURE' marks
not originating from the KOMEN

# Turn Left for the Cure Foundation

#### **News and Events**

Home Page | About Us | Programs | Support Us | Sponsorship | Contact Us | Membership | Volunteer

#### **Donations | Volunteer | Merchandise**

Your sponsorship will help support the annual mammogram and prostate cancer reminder postcards, postage, early breast cancer detection bookmarks and shower hangers. Your company's logo could be on any or all of the items sponsored.



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Volunteer

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includes two tags, one chain and one clip. Order your tags today from our partner the WBShop!







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#### WELCOME TO AN AUTOMOTIVE ENTHUSIASTS DREAM

The 6th Annual "Cars for the Cure" Auto Show extravaganza will be held the weekend of February 5th-7th 2010 at beautiful Colonial TownPark in Heathrow/Lake Mary Florida. This charitable event, with proceeds going to support the American Lung Association of Florida, promises to be like none other.













AFC Extreme Weekend Junior Team Women Team Men Team

TESTIMONIALS:

RAAM

Campaign

#### Adventures For the Cure | Mission Statement





Donate 🔚

Send Us A Donation

**AFC Mission Statement** 

Adventures For The Cure is a 501 (c)(3) tax-exempt nonprofit organization and USA Cycling Club that exists to raise awareness for diabetes, to show adults and children diagnosed with diabetes and their families how leading a healthy and active lifestyle can move you beyond your perceived limits, and to raise funds for diabetes research

In addition to our programs and services, such as the Extreme Weekend for Children with Diabetes camps, the organization also raises awareness and funds for other causes that the board of directors has selected. In the past, our efforts have supported:

American Diabetes Association









#### Examples of 'FOR THE CURE' and 'FOR A CURE' marks not originating from the KOMEN

## WELCOME

The idea of "Dribble for the Cure" was first developed at Marquette University by legendary basketball coach Al McGuire over 30 years ago. He founded his own "Dribble for the Cure" event, which is still going today and is one of the largest combined 8K events in the United States . His event continues to raise money for Children's Hospital of Wisconsin and during its history has raised over \$9.4 million for many children's hospital programs as well as the community in Milwaukee, Wisconsin.

Today, both UCLA and USC hold their individual "Dribble for the Cure" events in conjunction with the men's basketball programs and head coaches Kevin O'Neill at USC and Ben Howland at UCLA. Both coaches wish to begin the same tradition, as Marquette University has established, here in Southern California. 100% of the proceeds from the UCLA "Dribble for the Cure" will be split between Mattel Children's Hospital UCLA and the Pediatric Cancer Research Foundation and 100% of the USC "Dribble for the Cure" will be split between Childrens Hospital Los Angeles and the Pediatric Cancer Research Foundation.

Please become a part of the "Dribble for the Cure" event at either or even both Universities! You will be making a huge difference in the lives of children being treated at these two outstanding children's hospitals and helping in the funding of research to find a cure for pediatric cancer.









Click here to register/donate

NOVEMBER 1, 2009 - UCLA CAMPUS

OCTOBER 25, 2009 - USC CAMPUS

## Specter for the Cure





Turning Research into Cures

A Giant Leap In Turning Research into Cures.



in 2010. Arien Specter will seek re-election to the United States. Senate. With his unsurpassed record of support for medical research. helping to return Senator Specter to the Senate is a powerful statement on behalf of those suffering with disease. The purpose of this web site is to encourage support for Senator Specter's mission to improve America's health by helping assure Senator Specter's

For years and years, billions of your tax dollars have paid for medical research. There have been great discoveries - actually, we learn more every day - but where are the cures?

Between scientific discovenes and treatments which help alling Americans is what many researchers call a "valley of death". People are suffering, even losing their lives, who need not

Today, that starts to change. Senator Arien Specter intends to build a bridge over the valley of death

As the centerpiece of his re-election campaign, Senator Specter has launched "Specter for the Cure", a bold new initiative to reform our government's medical research efforts, cut red tape and unstrangle he hope for accelerated cures.

The sufferers of cancer, autism, Parkinson's, Alzheimer's, diabetes and too many other afflictions have waited long enough. It's time we inleashed the cure.

Senator Specter has introduced legislation to transform medical research by creating the Cures Acceleration Network ("CAN") -- a new institution, answering to the President of the United States, the sole mission of which is to turn medical research into disease cures.



"Life may not be the party we hoped for, but while we are here we might as well dance."

- Lynne Jordan

2009 Committee Members

A New Record!

rockforthecure.com

### **About Us**

We are family and long-time friends bonded to

each other in a common cause to find a cure for breast cancer. We hope that our unique approach will add in some small measure to the efforts of the many dedicated researchers who provide hope



for a cure; to the doctors, nurses, and care-takers who provide care and comfort; and to the women and men who suffer from this deadly disease.

Tickets

Links



Strokes for a Cure is a culmination of two authentic art forms coming together as one. Seth Simmons, a composer pianist, will perform his original compositions as fine artist Rolando Diaz paints an original art on canvas. The combination of brush strokes and ivory strokes on the piano is a benefit for The Leukemia & Lymphoma Society.

As Diaz uses his imagination, experiences and inspiration to transform the canvas with brush strokes and Simmons plays his original compositions, you will be taken to a place Friday, April 3rd, where only your imagination can stop you and anything is possible, even a cure for cancer.

Then guests will have the opportunity to take art created at the show, valued between \$6,000 to \$10,000, home with them to cherish forever via silent auction.



Seth & Rolando have been working together for over six years with their mainstay show, Euforia Live. While home is here in Dallas, they have also performed nationally and internationally, with highlights in places such as:

- · Bass Hall
- . The Plaza at Victory Park
- · Waldorf Astoria in New York
- · Gold & Blue Diamond Towers in South

TEAM
IN TRAINING

8pm, Doors open 7pm Euforia Theater - Dallas,





Place to all a recent recent will be discovered this on

Under Construction - Site Coming Soon

Send us an email

#### UPCOMING EVENTS:

#### New York Yankees Event September 9, 2009

We are pleased to announce Bat for the Cure will partner with the New York Yankees to Co-sponsor a complimentary prostate cancer screening before and during the game against the contending Tampa Bay Rays on Wednesday, September 9th 2009 The Screening will be available when the gates open at 4PM. Further details will be made available shortly

5th Annual Diamonds in the Rough Golf Classic

NEWS: Tampa Bay R

On July 23rd, Field (a one-of the Project to testing unit) In addition ear

cancer receive games during August 22nd)

#### THE CENTURY FOR THE CURE

Benefiting The Cancer Institute of New Jersey





Mark Your Calendar

The Century for the Cure

2008 Ride Video



Going from the February 22nd NASCAR race in Fontana, CA to the next race in Vegas on March 1st. Scott will travel all 150 miles from Baker, CA to Las Vegas, NV by way

of his wheelchair.

View Flyer







7th Annual Head for the Cure 5k Run & Walk - Kansas City

#### **Register Today!**

Sunday, August 30, 2009

The 2009 Head for the Cure 5k Run & Walk at Corporate Woods in Overland Park, Kansas (suburban Kansas City), promises to be the largest and most enjoyable family-friendly Head for the Cure event

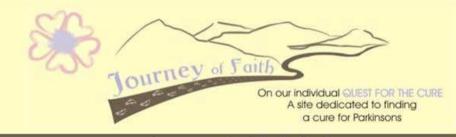
On Sunday, August 30, thousands of walkers, runners, volunteers, sponsors and friends of participants will celebrate the lives and legacies of individuals and families affected by brain cancer.

Register now by visiting the 2009 Head for the Cure 5k Registration

Please spread the word about this year's 5k and share the above link with family members, friends, runners and work acquaintances.

Together, we are Defeating Brain Cancer Step by Step!





Are you on a Quest for the Cure?



#### WHAT'S NEW?

Jane Urguhart and Ian **Events** page for details

Author Events October

#### Make a Donation

Read for the Cure has chosen to support The Cancer Research Society (CRS), whose mission is to fund basic cancer research, and specifically their new Environment-Cancer Fund.